

1 JEFFREY M. SHOHT, Bar No. 067529
2 jeffrey.shoht@dlapiper.com
3 CHRISTOPHER J. BEAL, Bar No. 216579
4 cris.beal@dlapiper.com
5 AMANDA C. FITZSIMMONS, Bar No. 258888
6 amanda.fitzsimmons@dlapiper.com
7 DLA PIPER LLP (US)
8 401 B Street, Suite 1700
9 San Diego, CA 92101-4297
10 Tel: 619.699.2700
11 Fax: 619.699.2701

7 Attorneys for Plaintiff
Oracle America, Inc.

9 GEOFFREY M. EZGAR, Bar No. 184243
10 gezgar@kslaw.com
11 KING & SPALDING LLP
12 101 Second Street
13 Suite 2300
14 San Francisco, CA 94105
15 Telephone: (415) 318-1200
16 Facsimile: (415) 318-1300

13 Attorney for Defendant
Myriad Group AG

[Additional Counsel Appear on Signature Pages]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

20 ORACLE AMERICA, INC.,

CASE NO. 10-CV-5604-SBA

21 Plaintiff,

STIPULATION AND REQUEST TO STAY LITIGATION

22 || v.

23 | MYRIAD GROUP AG,

Defendant.

1 WHEREAS, on January 17, 2012, this Court issued an Order Granting Oracle's Motion
 2 for Preliminary Injunction (hereinafter the "Injunction") to address disputes that had arisen
 3 between the parties concerning the earlier order, denying Myriad's Motion to Stay and Compel
 4 Arbitration, that has been appealed, by which it ordered Oracle and Myriad to meet and confer
 5 regarding a stay of this action and the arbitration of Oracle's breach of contract claim;

6 WHEREAS, if the parties did not reach agreement, the Court ordered supplemental
 7 briefing on Myriad's Motion for Stay Pending Appeal and Oracle's request to stay the arbitration
 8 of the contract claim by Friday, January 27, 2012;

9 WHEREAS, on January 25, 2012, Myriad notified the International Chamber of
 10 Commerce Court of Arbitration (ICC), the Permanent Court of Arbitration (PCA) and the
 11 International Centre for Dispute Resolution (ICDR) of the Injunction and requested that those
 12 institutions abate any activities inconsistent with the Injunction;

13 WHEREAS, on January 25, 2012 Oracle notified the ICC, PCA, and ICDR of its position
 14 concerning Myriad's January 25, 2012 submission;

15 WHEREAS, on January 30, 2012, the Court, pursuant to the parties' stipulation, extended
 16 the Court's deadline to Friday, February 3, 2012 so as to allow the parties additional time to meet
 17 and confer regarding a stay of the instant action and the arbitration;

18 WHEREAS, the parties have continued to meet and confer regarding a stay of the instant
 19 action and the arbitration;

20 WHEREAS, the parties agree that the interests of judicial economy and efficiency support
 21 a stay of the instant litigation, the litigation pending in the United States District Court, District of
 22 Delaware, and the arbitration until such time as the Ninth Circuit Court of Appeals resolves
 23 Myriad's appeal, subject only to the completion of the process of appointing an arbitrator;

24 WHEREAS, the parties disagree over whether such a stay should extend to the
 25 appointment of an arbitrator and this stipulation shall not be deemed or construed as a waiver of
 26 either party's rights and is made without prejudice to either party's substantive positions
 27 concerning the issues an arbitrator may appropriately be appointed to arbitrate, the location of the
 28 arbitration or the timing by which the parties shall proceed with the trial of the litigable claims

1 and the arbitration of the arbitrable claims;

2 **THE PARTIES HEREBY STIPULATE** as follows:

- 3 1. The instant litigation shall be stayed in its entirety as set forth below;
- 4 2. The parties shall submit a proposed stipulated order to the United States District
- 5 Court, District of Delaware requesting that the Delaware Action be stayed in its
- 6 entirety as set forth below;
- 7 3. The parties shall jointly submit a request to the ICC International Court of
- 8 Arbitration requesting that it complete the process of appointing an arbitrator, and
- 9 upon doing so, provide the arbitrator with copies of the Court's January 17, 2012
- 10 Injunction Order, the parties' January 25, 2012 correspondence to the ICC, PCA,
- 11 and ICDR, and this stipulation and its implementing Order(s), and instruct the
- 12 arbitrator that his or her appointment is being made subject to the terms and
- 13 conditions of this stipulation and that the arbitration shall be immediately stayed
- 14 upon his or her appointment as set forth below;
- 15 4. Neither Myriad nor Oracle will initiate any additional arbitrations nor any
- 16 additional claims in any court related to the claims presented in this action, the
- 17 Delaware Action, and/or the pending arbitration during the duration of the stay of
- 18 the litigations and existing arbitration;
- 19 5. Upon the issuance of the mandate by the Ninth Circuit Court of Appeals, the stay
- 20 of both litigations and the arbitration shall remain in force for a period of ten days
- 21 during which the parties shall meet and confer regarding further proceedings in
- 22 light of the ruling by the Ninth Circuit Court of Appeals and during which period
- 23 neither party will seek any rulings from this Court, the Delaware Court, and/or the
- 24 arbitrator;
- 25 6. Upon the conclusion of the ten-day meet-and-confer period, the stay of both
- 26 litigations and the arbitration shall be deemed lifted, and the parties shall be free to
- 27 pursue all appropriate courses of action, subject to further orders of the respective
- 28 courts or arbitrator.

1 Dated: February 3, 2012

2 DLA PIPER LLP (US)

3 By: /s/ Jeffrey M. Shohet
4 JEFFREY M. SHOHET
5 CHRISTOPHER J. BEAL
6 AMANDA C. FITZSIMMONS
7 Attorneys for Plaintiff
8 Oracle America, Inc.

9 Dated: February 3, 2012

10 KING & SPALDING LLP

11 By: /s/ Geoffrey M. Ezgar
12 GEOFFREY M. EZGAR
13 KEVIN R. SULLIVAN
14 TIMOTHY J. SULLIVAN
15 BRIAN A. WHITE
16 Attorneys for Defendant
17 Myriad Group AG

18 PURSUANT TO STIPULATION, IT IS SO ORDERED.

19 The instant action is administratively closed during the pendency of the stay. At the close
20 of the ten-day meet and confer period set forth above, the parties shall notify the Court of their
21 proposal for further handling of the instant action.

22 Date: 2-6-12

23 
24 Hon. Saundra Brown Armstrong
25 U.S. District Court